

APR 19 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Tariff Filing Requirements for ) CC Docket No. 93-36  
Nondominant Common Carriers )

REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP

Teleport Communications Group, Inc. (TCG) hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 93-36.

TCG fully supports the Commission's proposal to streamline, consistent with Section 203 of the Communications Act, tariff filing rules for nondominant carriers. TCG believes the Commission's proposed filing requirements are consistent with the Act and will promote increased competition. TCG disagrees, however, with certain of the filed comments.

Nondominant Carrier Policy

Certain Bell Operating Companies (BOCs) argue that the Commission should use this tariff process rulemaking as a vehicle to "scrap" its policies designating carriers as dominant and non-dominant.<sup>1</sup> Carriers should be declared equal, argue the BOCs, because metropolitan access markets are effectively competitive.

<sup>1</sup> Bell Atlantic Comments at 5. See also Pacific and Nevada Bell (PacBell) Comments at 9-11; Southwestern Bell (SWB) Comments at 8-9.

No. of Copies rec'd 244  
List A B C D E

The BOCs would then have the Commission apply its proposed streamlined tariff filing requirements to all carriers in competitive markets.<sup>2</sup> Applying a double standard, these commenters argue that the Commission's proposed rules are legal and in the public interest as long as the Commission applies the rules to them, but if the Commission only extends them to truly nondominant carriers, like TCG, the rules violate the Communications Act.<sup>3</sup> However, Ameritech takes a different position from its counterparts. It argues that while it would like to take advantage of the streamlined rules, it believes that the rules, themselves, are reasonable and should be adopted for nondominant carriers.<sup>4</sup> TCG asserts that the Commission promulgated these rules for nondominant carriers and until the BOCs are declared as such, these rules do not apply to their tariff filings.<sup>5</sup>

---

<sup>2</sup> See Ameritech Comments at 5-10; Bell Atlantic Comments at 2-7; BellSouth Comments at 4; PacBell Comments at 3-5; SWB Comments at 6-9, United States Telephone Association (USTA) Comments at 5.

<sup>3</sup> Several BOCs further illustrate the ambiguity of their position by arguing that the proposed rules are proper if applied to their mobile services subsidiaries. See SWB Comments at 3-4; 9-13; PacTel Corporation Comments at 9-10.

<sup>4</sup> Ameritech Comments at 5-10. Since the purpose of streamlining is to ease the burden on nondominant carriers who lack market power, TCG disagrees with Ameritech's proposal that the Commission require carriers subject to streamlined tariff rules to file annual reports indicating their installed base of special access circuits and customer-specific contract terms. *Id.* at 11-12.

<sup>5</sup> Bell Atlantic and SWB also use the NPRM as an opportunity to suggest multiple standards for determining whether a market is competitive. This, too, is beyond the scope of this proceeding. Bell Atlantic Comments at 5-6; SWB Comments at 9.

Even if the BOCs' argument -- that access markets are effectively competitive so the Commission should abandon its dominant and nondominant carrier designations -- had merit, it is beyond the scope of this rulemaking proceeding. The Commission initiated this rulemaking proceeding to "consider easing in the near term the existing tariff filing requirements for nondominant carriers."<sup>6</sup> The Commission, forced to operate with minimal resources, is attempting to quickly and efficiently implement the mandate of the D.C. Circuit to scrap its forbearance policy for nondominant carriers, not to discard its policy designating carriers which lack market power as nondominant. The BOCs are, therefore, complicating an already burdensome decision imposed by the Court with extraneous requests for relief.

In any case, the BOCs' premise for their own tariff deregulation is wrong. Access markets are not fully competitive -- the fact that there are competitors does not make a market competitive. The BOCs remain insulated from market pressures and have the incentive and ability to eliminate competition by cross-subsidizing competitive services with monopoly profits. The BOCs' claims about the extent of access competition<sup>7</sup> are largely anecdotal. The facts are to the contrary. As ALTS notes, no market where the predominant customer places 99.86% of its business

---

<sup>6</sup> NPRM at para. 2.

<sup>7</sup> See, e.g., NYNEX Comments at 4, describing competition as "intense."

with the monopoly providers can be considered even remotely competitive.<sup>8</sup>

PacBell points to CC Docket No. 90-132 to argue that the Commission has streamlined regulation for AT&T's business services and has thus already used a market analysis approach for determining the appropriate level of regulation.<sup>9</sup> PacBell is wrong, however, to compare Docket 90-132 and the findings made therein to the present proceeding. In this proceeding, the Commission is merely refining the tariff filing process for a limited class of nondominant carriers. Docket 90-132, by contrast, is a notice and comment proceeding which has been ongoing since April 1990. Over one hundred comments and reply comments have been filed, and the docket is still not closed. These commenters who now want access markets declared competitive plus a grant of immediate streamlined regulation are requesting the Commission to order, with absolutely no notice to affected parties, enormous relief which is beyond the limited scope of this proceeding.

Contrary to the arguments of SWB and Bell Atlantic, the Commission should continue to regulate dominant and nondominant carriers differently. SWB and Bell Atlantic contend that dominant

---

<sup>8</sup> See Association for Local Telecommunications Services (ALTS) Comments at 4, citing "Communications Daily," March 25, 1993, at 1 (AT&T Chairman Robert Allen discussing fact that AT&T pays \$14 billion in access charges to LECs but only \$19 million to CAPS, and that the LECs currently serve 99 percent of the access market).

<sup>9</sup> PacBell Comments at 5, citing Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991), recon. in part, Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991), further recon. 7 FCC Rcd 2677 (1992).

and nondominant carriers are so similar that the Commission should apply streamlined regulation to both.<sup>10</sup> However, TCG agrees with the commenters who asserted that the Commission cannot regulate in

of rates makes it impossible for competitors and customers to tell what rates the nondominant carrier will charge. However, as the Commission correctly interprets the functioning of the marketplace, a customer will contact the carrier and be informed of the applicable rate. If this rate is unsatisfactory, the customer can abandon the nondominant carrier for the LEC.<sup>14</sup> It is persuasive that a customer group, Tele-Communications Association, supports streamlined regulation of nondominant carriers to promote competition.<sup>15</sup> Even SWB agrees that "banded rates and maximum rates give adequate notice to consumers and the Commission of prices in order to satisfy themselves that the price is reasonable, thus qualifying as a tariff."<sup>16</sup>

The Commission has ample precedent confirming that it can authorize nondominant carriers to file a maximum rate or range of rates.<sup>17</sup> The Commission can look to the natural gas industry for

---

<sup>14</sup> PacBell, in its role as a competitor, did not have trouble contacting a number of major customers served by MFS to determine exactly what these customers paid per month for DS1 service. PacBell Comments at 12-13.

<sup>15</sup> Tele-Communications Comments at 2, 6.

<sup>16</sup> SWB Comments at 17.

<sup>17</sup> See Sprint Comments at 6 n.4; MCI Comments at 9-17. Contrary to PacBell's comments, Regular Common Carrier Conference v. United States does not prevent the Commission from instituting a maximum/minimum rate scheme. In this case, the D.C Circuit set aside the Interstate Commerce Commission's (ICC) action permitting a company to charge shipping rates based on an average of prior charges. The Court found that the ICC, in order to justify the rates, had improperly relied on one section of the Interstate Commerce Act to nullify another section. The Commission does not face this problem here. The Commission is not relying on an extraneous section of the Communications Act to modify the content

a tariff model that works. The Federal Energy Regulatory Commission (FERC), with the stated intention of imposing on pipeline companies more responsibility for their own business decisions, permits these companies to file tariffs specifying a maximum and minimum rate. The pipeline is free to charge customers rates anywhere within this band. FERC considers the maximum filed rate to be just and reasonable and expects pipelines to apply this rate or a lower rate in a non-discriminatory manner to all similarly-situated customers. FERC relies on its complaint procedures, as the Commission can rely on Section 208 of the Communications Act, to permit aggrieved parties to seek a determination of the lawfulness of a carrier's rates.<sup>18</sup>

of nondominant carrier tariffs. It can rely on Section 203(b) (2) which authorizes it to modify any portion of the section except the

Tariff Format and Filing

TCG fully supports the Commission's proposal to permit nondominant carriers to file their tariffs on diskettes in a form of their own choosing. However, to ease administrative burdens, TCG also supports Sprint's proposal to allow carriers with extensive tariffs on file at the Commission to have the option to continue to file written rates if they choose to do so.<sup>19</sup> Retaining the status quo format for some nondominant carriers may ensure the regulatory flexibility the Commission is hoping to give all nondominant carriers. TCG believes that the Commission should adopt its proposal to eliminate format requirements for cover letters and to reduce the notice period to one day to provide uniform flexibility for all nondominant carriers.

---

<sup>19</sup> Sprint Comments at 13.



Conclusion

TCG supports the Commission's proposal to refine the tariff filing requirements for nondominant carriers by allowing them (1) to file tariffs on not less than one day notice, (2) specify either a maximum rate or range of rates in the tariff, and (3) flexible filing requirements. These proposed rules are in the public interest and will encourage competition in the local services market.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J. Manning Lee", is written over a horizontal line.

J. Manning Lee  
Senior Regulatory Counsel  
Teleport Communications Group  
1 Teleport Drive, Suite 301  
Staten Island, New York 10311  
718-983-2671

April 19, 1993

CERTIFICATE OF SERVICE

I, Patricia B. Aunon, do hereby certify that true and correct copies of the foregoing document, "Reply Comments of Teleport Communications Group," filed In the Matter of Tariff Filing requirements for Nondominant Carriers, were served this 19th day of April 1993, on the following:

By Hand

Secretary  
Federal Communications  
Commission  
Washington, D.C. 20554

Policy and Program Planning  
Division  
Federal Communications  
Commission  
Common Carrier Bureau, Room  
544  
1919 M Street, N.W.  
Washington, D.C. 20554

International Transcription  
Services, Inc.  
2100 M Street, N.W., Suite 140  
Washington, D.C. 20037

By First Class Mail

James S. Blaszk  
Ad Hoc Telecommunications  
Users Committee  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

John L. Bartlett  
Aeronautical Radio, Inc.  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Albert H. Kramer  
American Public Communications  
Council  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Penthouse Suite  
Washington, D.C. 20005-3919

Francine J. Berry  
American Telephone and  
Telegraph Company  
295 North Maple Avenue  
Room 3244J1  
Basking Ridge, New Jersey  
07920

Floyd S. Keene  
Ameritech  
2000 W. Ameritech Center Drive  
Room 4H84  
Hoffman Estates, Illinois  
60196-1025

Heather Burnett Gold  
Association for Local  
Telecommunications Services  
1150 Connecticut Avenue, N.W.,  
Suite 1050  
Washington, D.C. 20036

Albert Halprin  
Halprin, Temple & Goodman  
Suite 1020, East Tower  
1301 K Street, N.W.

Michael D. Lowe  
Bell Atlantic Telephone  
Companies  
1710 H Street, N.W.  
Washington, D.C. 20006

William B. Barfield  
BellSouth Telecommunications,  
Inc.  
Suite 1800 1155 Peachtree  
Street, N.E.  
Atlanta, Georgia 30367-6000

Randolph J. May  
Capital Cities/ABC, Inc.  
National Broadcasting Company,  
Inc.  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Micahel F. Altschul  
Cellular Telecommunications  
Industry Association  
Two Lafayette Centre, Suite  
300  
1133 21st Street, N.W.  
Washington, D.C. 20036

W. Bruce Hanks  
Century Cellunet, Inc.  
100 Century Park Avenue  
Monroe, LA 71203

Danny E. Adams  
Competitive Telecommunications  
Association  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Ellen S. Deutsch  
Electric Lightwave, Inc.  
8100 N.E. Parkway Drive, Suite  
200  
Vancouver, WA 98662

Philip Otero  
GE American Communications,  
Inc.  
1331 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Brian R. Moir  
International Communications  
Association  
Fisher, Wayland, Cooper &  
Leader  
1255 23rd Street, N.W., Suite  
800  
Washington, D.C. 20037-1170

Kathy L. Shobert  
General Communications, Inc.  
888 16th Street, Suite 600  
Washington, D.C. 20006

Joseph P. Markoski  
Information Technology  
Association of America  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 407  
Washington, D.C. 20044

Steven J. Hogan  
LinkUSA Corporation  
230 Second Street S.E., Suite  
400  
Cedar Rapids, Iowa 52401

Stuart Dolgin  
Local Area Telecommunications,  
Inc.  
17 Battery Place, Suite 1200  
New York, New York 10004

Catherine Wang  
Swidler & Berlin  
Local Area Telecommunications,  
Inc.  
3000 K Street, N.W.  
Washington, D.C. 20007

Scott K. Morris  
McCaw Cellular Communications,  
Inc.  
5400 Carillon Point  
Kirkland, Washington 98033

Cathleen A. Massey  
McCaw Cellular Communications,  
Inc.  
1250 Connecticut Avenue, N.W.,  
Suite 401  
Washington, D.C. 20036

Donald J. Elardo  
MCI Telecommunications  
Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Cindy Z. Schonhaut  
MFS Communications Company,  
Inc.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Andrew D. Lipman  
MFS Communications Company,  
Inc.  
Swidler & Berlin  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Martin W. Bercovici  
Mobile Marine Radio, Inc.  
Keller and Heckman  
1001 G Street, N.W., Suite 500  
West  
Washington, D.C. 20001

Patrick A. Lee  
NYNEX Telephone Companies  
120 Bloomingdale Road  
White Plains, New York 10605

Walter Steimel, Jr.  
Pilgrim Telephone, Inc.  
Fish & Richardson  
601 13th Street, N.W., 5th  
Floor North  
Washington, D.C. 20005

David C. Jatlow  
RGT Utilities, Inc.  
Young & Jatlow  
2300 N Street, N.W., Suite 600  
Washington, D.C. 20037

Josephine S. Trubek  
RCI Long Distance, Inc. and  
Rochester Telephone  
Mobile Communications  
180 South Clinton Avenue  
Rochester, New York 14646

James P. Tuthill  
Pacific Bell and Nevada Bell  
140 New Montgomery Street,  
Room 1530-A  
San Francisco, CA 94105

James L. Wurtz  
Pacific Bell and Nevada Bell  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Anne P. Jones  
PacTel Corporation  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Brian D. Kidney  
PacTel Corporation  
2999 Oak Road, MS 1050  
Walnut Creek, CA 94569

Carl W. Northrop  
PacTel Paging et al.  
Bryan Cave  
700 13th Street, N.W., Suite  
700  
Washington, D.C. 20005

Kenneth Robinson  
Lafayette Center  
P.O. Box 57-455  
Washington, D.C. 20036

Leon M. Kastenbaum  
Sprint Communications Company,  
L.P.  
1850 M Street, N.W., Suite  
1110  
Washington, D.C. 20036

James D. Ellis  
Southwestern Bell Corporation  
175 E. Houston, Room 1218  
San Antonio, TX 78205

R. Michael Senkowski  
Tele-Communications  
Association  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Spenser L. Perry, Jr.  
Telecommunications Resellers  
Association  
P.O. Box 5090  
Hoboken, New Jersey 07030

Robert W. Healey  
Telecom Services Group, Inc.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W., Suite 510  
Washington, D.C. 20036

Thomas A. Stroup  
Telelocator  
1019 19th Street, N.W., Suite  
1100  
Washington, D.C. 20036

Joe Alexander  
Two-Way Radio Communications  
Co. of Kansas, Inc.  
43 Western Avenue  
P.O. Box 1066  
Liberal, Kansas 67905

Martin T. McCue  
United States Telephone  
Association  
900 19th Street, N.W., Suite  
800  
Washington, D.C. 20006-2105

National Telephone Cooperative  
Association  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

  
Patricia B. Aunon